



Appeal Decision

Site visit made on 21 August 2017

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 07 September 2017

Appeal Ref: APP/E3525/W/17/3174443

Broom Hall Farm, Freewood Street, Bradfield St George, Bury St Edmonds IP30 0AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous approval required under Schedule 2 Part 3 Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 was granted.
- The appeal is made by C R Rush Farms against the decision of St Edmundsbury Borough Council.
- The application Ref DC/16/1753/VAR dated 8 August 2016 was refused by notice dated 23 November 2016.
- The application sought approval for (i) Change of use of agricultural building to dwellinghouse (Class C3) to create 1 dwelling (ii) associated operational development without complying with a condition attached to prior approval Ref DC/16/0394/PMBPA dated 18 April 2016.
- The condition in dispute is No 3 which states that: *Before the access is first used clear visibility at a height of 0.6 metres above the carriageway level shall be provided and thereafter permanently maintained in that area between the nearside edge of the metalled carriageway and a line 2.4 metres from the nearside edge of the metalled carriageway at the centre line of the access point (X dimension) and a distance of 90 metres in each direction along the edge of the metalled carriageway from the centre of the access (Y dimension). Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.*
- The reason given for the condition is: *To ensure vehicles exiting the drive would have sufficient visibility to enter the public highway safely, and vehicles on the public highway would have sufficient warning of a vehicle emerging to take avoiding action.*

Decision

1. The appeal is dismissed.

Background and Main Issues

2. Application DC/16/0394/PMBA for prior approval under Schedule 2 Part 3 Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for the change of use of an agricultural building to dwellinghouse (Class C3) to create one dwelling together with associated

operational development at the appeal site was granted approval on 18 April 2016 subject to conditions (the Prior Approval). Condition 3 of the Prior Approval requires the provision of visibility splays to the access before it is first used. In addition the condition requires that the visibility splays be kept free of obstruction over 0.6 metres high.

3. In August 2016 the appellants submitted an application to remove the condition as they considered it to be unnecessary, unreasonable and unenforceable. The application was refused by the Council on grounds relating to highway safety.
4. I therefore consider the main issue to be whether condition 3 is necessary, reasonable and enforceable having regard to the safety of users of the public highway and the Public Right of Way that forms the access to the appeal site.

Reasons

Necessary

5. The appeal site is located at Broomhall Farm which is an agricultural yard with a number of buildings accessed from a narrow track from Freewood Street. The access track is also a Public Right of Way (PROW). The change of use of one of the agricultural buildings at Broomhall Farm as approved under the Prior Approval would result in domestic traffic using the PROW to access Freewood Street.
6. The access to the proposed house is, therefore, existing and used by agricultural traffic. I have been provided with a copy of a Transport Statement 2016 (TS) prepared at the time of the Council's consideration of the Prior Approval. Using Trip Rate Information and Computer System (TRICS) data, based on the provision of a five bedroom house as proposed, the TA presumes seven daily traffic movements. The submitted layout plan with the Prior Approval shows parking for seven vehicles. It is likely therefore that there could be a higher number of movements which the TS places at fourteen movements per day. While these figures have not been disputed by the appellants, they do suggest that there would be no increase in vehicle movements over and above the agricultural traffic currently using the access.
7. I have though been provided with no evidence from the appellants, regarding the level of use of the existing access. The TA contains affidavits from two local residents who state that the access is infrequently used apart from at harvest time. This is not to say though that such use would not be more frequent in the future. However, I have seen nothing to suggest that this is likely to be the case. Therefore, based on the evidence in front of me, I consider it likely that the daily comings and goings associated with a large house would create more traffic movements than agricultural traffic currently using the track.
8. In addition the driver of an agricultural vehicle is likely to be at a higher level than car drivers and therefore have a greater range of vision over the hedgerows that are present at the junction of the PROW and Freewood Street.
9. From my observations during the site visit, including exiting the PROW by car I found that visibility was limited to an extent by the existing hedge to the north. Furthermore, I observed that visibility towards the south is severely restricted

by a hedgerow. This is exacerbated by the location of a bend in the road close to the access.

10. Freewood Street is a narrow unlit rural road with no footways. It is likely given that the access is a PROW that pedestrians would be approaching from both directions and I saw that they would have very limited visibility to vehicles exiting the junction, particularly when approaching from the south. Equally, I drove towards the access from the south and saw that drivers of cars would have difficulty seeing cars exiting the PROW until nearly upon the junction. As a result there is potential for conflict between pedestrians, cyclists and cars that would cause unacceptable harm to the safety of the users of the highway.
11. My concern regarding the potential for conflict is increased by the results of the speed surveys in the TA. The 85th percentile results show that, when travelling in a northerly direction, traffic accelerates from 33.1mph to 38.5 mph past the access. Furthermore, the TA contains details of an accident which occurred in the vicinity of the access and local residents report a further incident since that time. While these have not been confirmed by any official road traffic accident reports and, therefore, have not been determinative in their own right, they add to my concerns outlined above.
12. Given that there would be an increase in the use of the access by domestic traffic then, for the reasons above, I conclude that the use of the existing PROW would not achieve a safe and suitable access to the site for all people, or create a safe and secure layout which minimises conflicts between traffic, and cyclists or pedestrians, contrary to the requirements of paragraphs 32 and 35 of the National Planning Policy Framework (the Framework). Therefore, I am satisfied that in accordance with paragraphs 203 and 206 of the Framework the imposition of a condition requiring the provision of visibility splays is necessary to make an otherwise unacceptable development acceptable.
13. I have had regard to condition 1 of approval DC/16/0394/PMBPA which states that:

No part of the development shall be commenced until details of the proposed access (including the position of any gates to be erected and visibility splays provided) have been submitted to and approved in writing by the Local Planning Authority. The approved access shall be laid out and constructed in its entirety prior to occupation. Thereafter the access shall be retained in its approved form.
14. The appellant considers that condition No 3 is a duplicate of the requirements of condition No 1 and therefore the disputed condition is not necessary. Having had regard to the wording of condition No 1 it is clear that the submission of the details of the visibility splays and their approval by the Council could be controlled through the requirements of the condition. However, I note that the implementation and retention clauses of the condition relate to the access only and not specifically the visibility splays.
15. I have found that it is necessary for the visibility splays to be provided to make the development acceptable. It follows therefore that the more precise wording of condition No 3 is necessary to ensure that they are implemented prior to the access being used.

Reasonable

16. Schedule 2 Part 3 Class W (13) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) states "*The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval*". The subject matter for consideration in a prior approval under Class Q includes "*transport and highways impacts of the development*". I am satisfied therefore that Condition No 3 reasonably relates to the subject matter of the prior approval.
17. Condition No 3 is worded as a so called Grampian condition requiring that the access is not used until the required visibility splays have been provided. The Planning Practice Guidance (PPG) advises that such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission (009 Reference ID: 21a-009-20140306). The appellants consider that as the land required for the visibility splays is not in their ownership then the condition is unreasonable.
18. Nevertheless, I have seen no other evidence from the appellant to suggest that all avenues have been pursued in terms of an agreement with the land owner, or that the land owner has withheld the permission or refused to sell the land in question. There is no time limit imposed on the permission for prior approval. Therefore, based on the evidence before me, I cannot conclude that there are no prospects at all of the visibility splays being provided during the lifetime of the permission. I am satisfied therefore, in this instance, that it would be reasonable to impose the Grampian style condition No 3.

Unenforceable

19. The PPG advises that unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control (Paragraph: 004 Reference ID: 21a-004-20140306).
20. Given that the requirement is to provide visibility splays where there are currently none, then it would be possible for the Council to detect whether the splays have been provided, and take measurements to ensure they had been provided in accordance with the requirements. There is a clear necessity in the wording of the condition for the visibility splays to be provided before the commencement of the use of the access. The wording of the condition in a negative format ensures that in accordance with relevant case law¹ the condition is enforceable. I have already found that it has not been demonstrated that there is no prospect of the visibility splays being provided, even though the land is not in the control of the appellant. Therefore, I conclude that Condition No 3 is enforceable.

¹ *Grampian Regional Council v. City of Aberdeen District Council* (1984) 47 P.&C.R. 633

Conclusion

21. I have found that condition No 3 is necessary to make an unacceptable development acceptable. Furthermore, I have found, for the reasons above, that condition No 3 is necessary, reasonable and enforceable having regard to the safety of users of the public highway and the Public Right of Way that forms the access to the appeal site. Therefore, for the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Zoe Raygen

INSPECTOR